

Internal Revenue Service
memorandum

CC:TL-N 6606-89
Br4:JTChalhoub

date: JUL 05 1989

to: Assistant District Counsel, Newark, New Jersey CC:NEW:TL

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject: Disclosure of Multiple Year Notice of Deficiency to Attorney
Under Power (Form 2848) For Only One Year

This responds to your May 9, 1989, request for technical advice regarding the proper procedure for issuing a notice of deficiency where a copy is sent to an authorized representative.

ISSUE

Whether and how to notify a taxpayer and/or his representative that a copy of the notice of deficiency sent to the representative does not include information regarding tax years for which there is no valid power of attorney on file.

CONCLUSION

A taxpayer's representative should be sent a copy of a notice of deficiency sent to the taxpayer after sanitizing or deleting any information pertaining to years for which the representative does not have authority. Both the taxpayer and his/her representative should be informed that they may not be getting identical information. The taxpayer should be so informed only in those specific situations where information has been deleted from the representative's copy. The representative should be alerted to the possibility of deletion or sanitization on each occasion that a copy of a notice of deficiency is sent. This is best accomplished by sending a "generic notice" whether or not any information was deleted.

We recommend the following language be included as a "generic notice" to a representative under Form 2848:

IMPORTANT NOTICE: To the extent the enclosed notice of deficiency contains confidential information of the taxpayer, it does so only with respect to those years for which the taxpayer has filed a valid power of attorney. In the event information pertaining to other tax years is contained on the original notice of deficiency, that information will not have been included on the copy provided to you. Federal law (26 U.S.C. § 6103) prohibits the IRS from disclosing

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whether there exists any such information. It is your responsibility to check with your principal, the taxpayer, as to whether this was done in this case.

We recommend the following language be included in a notice of deficiency (or in an attachment thereto) if the original notice to the taxpayer differs from the copy sent to the taxpayer's representative:

IMPORTANT NOTICE: This notice of deficiency has not been sent to your representative because you have not filed a Power of Attorney for tax years(s) _____. We have sent your representative an edited copy of this notice of deficiency which does not include any information about such tax year(s). For your convenience, we are including a copy of the original notice of deficiency that is unedited. You may give this unedited copy to your representative if you wish. However, you must fill out a new Power of Attorney (Form 2848) if you want the IRS to send your representative copies of documents regarding such tax years(s).

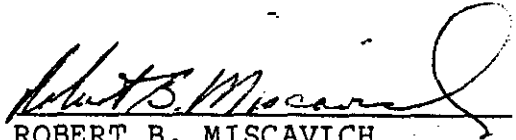
We suggest the copy of the taxpayer's notice of deficiency sent to the representative should not be edited in a manner that would disclose that editing has taken place. Rather, separate notices should be prepared which give no indication that certain information was not included.

The suggestion by the Tax Court in footnote 5 of Madsen v. Commissioner, T.C. Memo 1988-179, while well intentioned, does present a problem of unauthorized disclosure as raised by the Chief, Review Staff in response to your May 31, 1988, memo relating to Madsen. I.R.C. § 6103(b)(2) defines "return information" to include, inter alia, "whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing." If the Service discloses to a representative on a copy of the notice of deficiency that "information pertaining to unauthorized year(s) has been deleted," this would constitute a disclosure of return information, i.e., that the taxpayer was sent a notice of deficiency for other unspecified years.

The above conclusion has been coordinated with and approved by the Disclosure Litigation Division. If you have any questions regarding this advice please call Joseph T. Chalhoub at FTS 566-3345.

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